
**INTER-AMERICAN COMMISSION ON HUMAN RIGHTS
RESOLUTION TO LIFT PRECAUTIONARY MEASURES 8/2023**

Precautionary Measure No. 127-07
José Emery Álvarez Patiño et al. regarding Colombia
(Leaders of the Council of Black Communities of the Western Cordillera of Nariño -
COPDICONC)¹
February 25, 2023
Original: Spanish

I. SUMMARY

1. The Inter-American Commission on Human Rights (IACHR) decides to lift these precautionary measures in favor of José Emery Álvarez Patiño, Marlene Cisneros, José Gildardo Ortega, José Arcos, Alfredo Quiñones, Arcediano Pialejo Micolta, Claudio Esterilla Montaña, Gonzalo Caicedo Esterilla, José Rogelio Montaña, Maritza Caicedo Ordoñez, Marianita Montilla Cobo, Fanny Caicedo, and José Pablo Estrada Perlaza regarding Colombia. At the time of making the decision, the Commission assessed the actions taken by the State during implementation as well as the observations from the beneficiaries' representation. Upon not identifying compliance with the procedural requirements, the IACHR has decided to lift these precautionary measures.

II. BACKGROUND INFORMATION

2. On July 24, 2007, the IACHR granted precautionary measures in favor of (1) José Emery Álvarez Patiño, (2) Marlene Cisneros, (3) José Gildardo Ortega, (4) José Arcos, (5) Alfredo Quiñones, (6) Arcediano Pialejo Micolta, (7) Claudio Esterilla Montaña, (8) Gonzalo Caicedo Esterilla, (9) José Rogelio Montaña, (10) Maritza Caicedo Ordoñez, (11) Marianita Montilla Cobo, (12) Fanny Caicedo, and (13) José Pablo Estrada Perlaza, all of them identified as leaders of the Council of Black Communities of the Western Cordillera of Nariño (*Líderes del Concejo de Comunidades Negras de la Cordillera Occidental de Nariño*, COPDICONC). The information available indicated that residents of six communities in the Department of Nariño, and particularly the leaders of COPDICONC, had been victims of acts of harassment, death threats, and detainments by illegal armed groups and the public force itself. It was alleged that the leaders of COPDICONC are often subject to hostile acts by members of both paramilitary and guerrilla groups, who accuse them of cooperating with the opposing side. In view of the situation, the Commission requested that the State adopt the necessary measures to protect the life and physical integrity of the beneficiaries, and to report on the actions taken to investigate judicially the facts that gave rise to the precautionary measures.²

3. The representation is exercised by the Association for Research and Social Action NOMADESC (*Asociación para la Investigación y Acción Social NOMADESC*).

III. INFORMATION PROVIDED DURING THE TIME THESE MEASURES WERE IN FORCE

4. During the time the precautionary measures were in force, the Commission followed-up on the subject matter of these precautionary measures by requesting information from the parties. According to the information available in the System, the representation sent communications on the following dates:

¹ In accordance with Article 17.2 of the Rules of Procedure of the IACHR, Commissioner Carlos Bernal Pulido, a Colombian national, did not participate in the debate and deliberation of this matter.

² IACHR, Annual Report 2007, Chapter III, [Section C: Petitions and Cases before the Inter-American Commission on Human Rights](#)

2013	August 12
2019	October 3 (request to include an email for notifications) ³

5. For its part, the State has submitted reports and observations on the following dates:

2012	November 29
2016	October 18 (request to lift) and December 22

6. The Commission forwarded these reports between the parties and requested relevant information on the following dates:

2013	April 2
2014	April 8
2016	September 26
2017	April 5
2021	March 15
2022	October 28

7. On September 26, 2016, the Commission requested information from the representation so that “[the IACHR] can examine the relevance of keeping these precautionary measures in force.” No reply was received. On April 5, 2017, the Commission requested observations from the representation on the State’s 2016 request to lift the measures. On March 15, 2021, the Commission informed the representation that it had not received a response to the communication from 2017. On October 28, 2022, the Commission again requested the representation submit a response “with a view to analyzing the act of keeping these precautionary measures in force.” No reply was received to any of the communications.

A. Response from the State

8. In 2012, the State reported that on August 30 of that year, a follow-up and consultation meeting was held with applicants, beneficiaries, and various State authorities. At that meeting, the situation of COPDICONC and the situation of a few individuals were allegedly addressed. In particular, they reportedly referred to the situation of Mr. Claudio Esterilla Montaña, who was the victim of an attack. Given the aforementioned facts, on October 30, 2012, the National Protection Unit has reportedly carried out the relevant procedures to conduct a new technical study of the beneficiary’s risk level, the result of which has allegedly resulted in an extraordinary level of risk and has led to the reported implementation of emergency measures. In this regard, the State reported that a type 1 protection plan is reportedly in force, which allegedly consists of an ordinary car, two security escorts, and a satellite communication device. On November 1, 2012, the aforementioned measures were allegedly ratified for a period of one year. On the other hand, the State reported that seven investigations had been allegedly carried out, in which the COPDICONC leaders were registered as victims. It is alleged that they are in the investigation stage.

9. In 2016, the State indicated that it had reportedly had no knowledge of recent events that would allow to establish the risk which the beneficiaries of the precautionary measures allegedly face. The State also indicated that, since July 2016, police activities have been reportedly carried out in order to prevent, deter, and control criminal activity throughout the jurisdiction of the Department of Nariño and especially in the municipalities of Policarpa, El Charco, Leiva, El Rosario, and Santa Bárbara de Iscuandé, a region where the

³ An email address was included for notifications.

Council of Black Communities (*Consejo de Comunidades Negras*) of the Western Cordillera of Nariño is reportedly present. Furthermore, the State submitted information regarding the results of the risk assessment carried out regarding the beneficiaries of the precautionary measures. It indicated that, in seven of these assessments, the level of risk has been reportedly considered as ordinary, three work orders have allegedly remained inactive and, in one case, the procedure was reportedly returned due to the beneficiary's refusal to conduct the interview. In relation to the spaces for consultation, the State reported that up until 2016 there had allegedly been four occasions: on August 13, 2008; August 30, 2012; July 25, 2013; and March 27, 2015.

10. In relation to the investigations, the State reported that the Director of the Branch of Prosecutors' Office of Cali had been requested study the feasibility of associating the investigations found in this Branch in order to carry out a study in context, given that the victims are Afro-descendant leaders, human rights defenders, and beneficiaries of precautionary measures. Moreover, the State reported that the National Directorate of Prosecutors' Offices ordered to hold Legal Technical Committees in the Directorate of Branches (*Comités Técnico Jurídicos en las Direcciones Seccionales*) of Prosecutors' Offices of Cali, National Units against Forced Disappearance and Emerging Gangs (*Unidades Nacionales contra la Desaparición Forzada y contra Bandas Emergentes*), in the last months of 2013, in order to identify strategies to accelerate the investigations that were in progress. In addition, the State reported that, as a result of the follow-up and consultation meeting of March 27, 2015, the Office of the Attorney General submitted information in which members of the organization are registered as victims:

	Victims	Crime	Status
1	Amaya Ordoñez María Antonia, Perea Valencia Ángela María, Arco Velásquez José Iris	Theft	Estoppel (<i>Preclusión</i>)
2	Amaya Ordoñez María Antonia, Perea Valencia Ángela María, Arco Velásquez José Iris	Threats	Archived due to inability to find active subject
3	Amaya Ordoñez María Antonia, Claudio Montaña Esterilla, Pialejo Micolta Arceliano, Arco Velásquez José Iris	Threats	Inactive due to connection
4	Claudio Montaña Esterilla	Threats	
5	Claudio Montaña Esterilla	Extortion	Archived due to inability to locate the perpetrator
6	Claudio Montaña Esterilla	Improper management of social resources	Archived
7	Amaya Ordoñez María Antonia, Pialejo Micolta Arceliano	Threats	Active – This investigation has been allegedly linked to four other investigations
8	Claudio Montaña Esterilla	Aggravated attempted murder	Archived due to inability to locate the perpetrator
9	Claudio Montaña Esterilla	Aggravated attempted murder to an internationally protected person	Active – The State indicates that this investigation was initiated based on the complaint filed by Mr. Pialejo Micolta Arceliano, however, it is related to the murder of Esterilla Montaña Claudio.

10	Arcos José, Amaya Ordoñez María Antonia	Forced displacement	
11	Arco Velásquez José Iris, Amaya Ordoñez María Antonia	Kidnapping	Archived due to inability to locate the perpetrator
12	Amaya Ordoñez María Antonia	Threats to witnesses	
13	Montilla Cobo Marianita	Theft	Inactive - Termination of the action due to withdrawal
14	Montilla Cobo Marianita	Threats	Archived due to inability to locate the perpetrator
15	Montilla Cobo Marianita	Aggravated theft	Archived due to inability to locate the perpetrator
16	Caicedo Ordoñez Maritza	Aggravated theft	Archived due to atypical behavior
17	Cisneros Marleni	Threats	Inactivated due to accumulation

11. In relation to José Pablo Estada Perlaza, it was indicated that an investigation for the crime of Threats is reportedly registered. On the other hand, the State reported the participation of the Prosecutor's Office in the subgroup of Investigations of the National Round Table on Guarantees (*Mesa Nacional de Garantías*) was allegedly implemented to face the obstacles identified in the investigations. Furthermore, in 2015, the Attorney General reportedly formed two special task forces to investigate and prosecute violations of the rights of human rights defenders. In particular, with regard to the alleged threats in which Marleni Cisneros and María Antonia Amaya Ordoñez are listed as victims, it is reported that investigations have been carried out to establish the origin of the threats, and, among other tasks, to gather information in each of the populations where COPDICONC has influence and carries out its work, in order to establish or define which criminal groups operate there and may be responsible for intimidating the members of this association. In addition, it was indicated that proceedings had been carried out to establish the origin of the telephone calls. These proceedings concluded, in the case of María Antonia Amaya Ordóñez, that the telephone line used to threaten her allegedly correspond to an over-the-counter *sim card*, registered in the name of a deceased citizen, resulting in an obstacle in the investigation. In relation to the case of Marleni Cisneros, it is alleged that it has not been possible to establish any data since the dates and times of the threatening calls had not been specified. Therefore, it has been reportedly considered feasible to accumulate the inquiries and provide analysis of all the collected material.

B. Information submitted by the representation

12. In 2013, the representation submitted information indicating that the communities belonging to the Community Council of the Western Cordillera de Nariño and South of Cauca (COPDICONC) allegedly continue to be victims of permanent violations of International Humanitarian Law, including intense bombing, occupation of the collective property of the community such as schools, explosive devices being dropped near homes, mobility restrictions, constant searches, and territorial control by armed actors. It was indicated that “[i]n the *corregimiento* of Fenicia (a rural division), Municipality of Santa Bárbara Iscuandé Nariño, on August 31 [sic], 1, 2 and 3, 2013, massive displacements of communities were reported due to bombings [carried out] by the National Army [in the context of] armed confrontations with the Front 29 of the FARC.” On August 2, 2013, the National Army reportedly dropped four bombs on the collective territories of the Minor Community Council of the Fenicia community. It was reported that one of the four explosives fell 35 meters from the school, almost inside the cemetery, causing serious damage to a space the communities consider sacred. These confrontations and bombardments reportedly resulted in the displacement of the population towards Corregimientos Displayado, municipality of El Charco and Santa Rosa municipality of Policarpa, under the overflights of helicopters and combat aircrafts that disembarked army personnel inside the collective territories. In this regard, on the road from El Salto to the municipality of Santa Barbara de Iscuandé, a bomb reportedly fell in the community of Campo Alegre and El Naya, ten meters from the educational center, which

affected mobility, study, agricultural practices, fishing, and other activities for the livelihood of the population. This situation was reportedly brought to the attention of the government and the entities in charge during the consultation meeting held on July 25, 2013. Furthermore, the representation recalled that the territories of COPDICONC are mentioned in Order 005 of the Constitutional Court that requests the State to protect the fundamental rights of the Afro-descendant population, victims of forced displacement in the framework of overcoming the unconstitutional state of affairs declared in judgment T-025/04, which, to date, has not been complied with.

13. In 2019, an email opt-in request for notifications was received. Subsequently, no additional information was received.

IV. ANALYSIS OF THE REQUIREMENTS OF URGENCY, SERIOUSNESS, AND IRREPARABLE HARM

14. The precautionary measures mechanism is part of the Commission's functions of overseeing Member States' compliance with the human rights obligations established in Article 106 of the Charter of the Organization of American States. These general functions are set forth in Article 41(b) of the American Convention on Human Rights, as well as in Article 18(b) of the Statute of the IACHR. Moreover, the precautionary measures mechanism is enshrined in Article 25 of the Rules of Procedure. In accordance with this Article, the IACHR grants precautionary measures in urgent and serious situations in which these measures are necessary to avoid irreparable harm to persons or to the subject matter of a petition or case before the organs of the inter-American system.

15. The Inter-American Commission and the Inter-American Court of Human Rights ("the Inter-American Court" or "I/A Court H.R.") have repeatedly established that precautionary and provisional measures have a dual nature, both protective and precautionary.⁴ Regarding the protective nature, these measures seek to avoid irreparable harm and protect the exercise of human rights.⁵ To do this, the IACHR shall assess the problem raised, the effectiveness of state actions to address the situation described, and how vulnerable the persons proposed as beneficiaries would be left in case the measures are not adopted.⁶ Regarding their precautionary nature, these measures have the purpose of preserving a legal situation while under consideration by the organs of the inter-American system. They aim to safeguard the rights at risk until the petition pending before the inter-American system is resolved. Their object and purpose are to ensure the integrity and effectiveness of an eventual decision on the merits and, thus, avoid any further infringement of the rights at issue, a situation that may adversely affect the useful effect (*effet utile*) of the final decision. In this regard, precautionary or provisional measures enable the State concerned to comply with the final decision and, if necessary, to implement the ordered reparations. In the process of reaching a decision, according to Article 25(2) of its Rules of Procedure, the Commission considers that:

⁴ See in this regard: I/A Court H.R. [Matter of the Yare I and Yare II Capital Region Penitentiary Center](#). Request for Provisional Measures submitted by the IACHR regarding the Bolivarian Republic of Venezuela, Order of the Inter-American Court of Human Rights of March 30, 2006, considerandum 5; I/A Court H.R. [Case of Carpio Nicolle et al. v. Guatemala](#). Provisional Measures, Order of July 6, 2009, considerandum 16.

⁵ See in this regard: I/A Court H.R. [Matter of Capital El Rodeo I and El Rodeo II Judicial Confinement Center](#). Provisional Measures regarding Venezuela, Order of the Court of February 8, 2008, considerandum 8; I/A Court H.R. [Case of Bámaca Velásquez](#). Provisional measures regarding Guatemala, Order of the Court of January 27, 2009, considerandum 45; I/A Court H.R. [Matter of Fernández Ortega et al.](#) Provisional Measures regarding Mexico, Order of the Court of April 30, 2009, considerandum 5; I/A Court H.R. [Matter of Milagro Sala](#). Request for Provisional Measures regarding Argentina, Order of the Inter-American Court of Human Rights of November 23, 2017, considerandum 5.

⁶ See in this regard: I/A Court H.R. [Matter of Milagro Sala](#). Request for Provisional Measures regarding Argentina, Order of the Inter-American Court of Human Rights of November 23, 2017, considerandum 5; I/A Court H.R. [Matter of Capital El Rodeo I and El Rodeo II Judicial Confinement Center](#). Provisional Measures regarding Venezuela, Order of the Court of February 8, 2008, considerandum 9; I/A Court H.R. [Matter of the Criminal Institute of Plácido de Sá Carvalho](#). Provisional Measures regarding Brazil, Order of the Inter-American Court of Human Rights of February 13, 2017, considerandum 6.

- a. “serious situation” refers to a grave impact that an action or omission can have on a protected right or on the eventual effect of a pending decision in a case or petition before the organs of the inter-American system;
- b. “urgent situation” refers to risk or threat that is imminent and can materialize, thus requiring immediate preventive or protective action; and
- c. “irreparable harm” refers to injury to rights which, due to their nature, would not be susceptible to reparation, restoration or adequate compensation.

16. With regard to the foregoing, Article 25(7) of the Commission’s Rules of Procedure establishes that decisions “granting, extending, modifying or lifting precautionary measures shall be adopted through reasoned resolutions.” Article 25(9) establishes that “[t]he Commission shall evaluate periodically, at its own initiative or at the request of either party, whether to maintain, modify or lift the precautionary measures in force.” In this regard, the Commission shall assess whether the serious and urgent situation and the risk of irreparable harm that caused the adoption of the precautionary measures persist. Moreover, the Commission shall consider whether new situations have subsequently arisen that might meet the requirements set forth in Article 25 of the Rules of Procedure.

17. Similarly, while the assessment of the procedural requirements when adopting precautionary measures is carried out from a *prima facie* standard, keeping such measures in force requires a more rigorous evaluation. In this sense, when no imminent risk is identified, the burden of proof and argument increases over time. The Inter-American Court has indicated that the passage of a reasonable period of time without any threats or intimidation, in addition to the lack of imminent risk, may lead to the international protection measures being lifted.⁷

18. Regarding the situation of the 13 individual beneficiaries, the Commission observes that the State reported on protection measures in their favor. In this regard, the following measures have been implemented:

- Spaces for consultation with the beneficiaries and their representation. The Commission notes that at least four consultation meetings were held in 2008, 2012, 2013, and 2015. The Commission acknowledges that, in the framework of the implementation of these precautionary measures, follow-up meetings have been held to facilitate understanding between the parties.
- Risk assessments of beneficiaries and implementation of security plans in favor of the beneficiaries.
- Investigations on alleged facts based on the individualized situation of the beneficiaries. The Commission highlights the initiatives reported by the State aimed at the association of investigations that lead to a study in context, taking into account differential aspects such as the fact that the persons are Afro-descendant leaders, human rights defenders, and beneficiaries of precautionary measures granted by the Commission.

19. Notwithstanding the measures implemented, the Commission observes that the State reported, in 2016, that there was an investigation into the “aggravated attempted murder” of beneficiary Claudio Esterilla Montaño.⁸ From the information available, the Commission notes that he was victim of an attack in 2012. Further information on his particular situation has not been received. Notwithstanding the foregoing, the Commission calls upon the State to continue with the corresponding investigations in light of the applicable standards, also considering that the facts occurred while the present precautionary measures were in force.

⁷ I/A Court H.R., [Provisional Measures regarding Mexico](#), Order of February 7, 2017, paras. 16 and 17.

⁸ The information also indicates that the investigation was initiated due to a complaint related to “the murder of Esterilla Montaño Claudio.” No additional information was provided to clarify whether the homicide materialized or whether it refers to the investigation for attempted murder.

20. Following the State's request to lift in 2016, the Commission requested the representation submit its observations in 2017. Subsequently, the Commission sent a request for information to the representation on March 15, 2021, and reiterated it on October 28, 2022. To date, no response has been received from the representation. The Commission notes that the latest communication from the representation is dated October 3, 2019. In this communication, the representation did not provide information on the beneficiaries, and only referred to the incorporation of an e-mail address of the organization for notifications. In this regard, the Commission has no information from the representation since 2013. In that year, the representation referred mainly to contextual elements of violence in the area, but did not address the individual situation of the beneficiaries.

21. Since then, the Commission notes that approximately nine years have passed without information on the beneficiaries' situation. Consequently, the Commission does not have any assessment elements that would allow it to identify a current situation that places the beneficiaries at risk in terms of Article 25 of the Rules of Procedure.

22. The Commission also recalls that the representation of the beneficiaries who wish the measures to continue must provide evidence of any reasons to do so.⁹ Similarly, Article 25, subparagraph 11 of the Rules of Procedure sets forth that the Commission may lift or review a precautionary measure when the beneficiaries or their representation unjustifiably fail to provide the Commission with a satisfactory response to the requests made by the State for its implementation.

23. Considering the aforementioned, taking into account the temporary and exceptional nature of the precautionary measures mechanism,¹⁰ the Commission considers that, in use of its regulatory powers, it is appropriate to lift the present measures, since the lack of information from the parties prevents it from analyzing the current compliance with the regulatory requirements.

V. DECISION

24. The Commission, in exercise of its statutory faculties, decides to lift the precautionary measures granted in favor of (1) José Emery Álvarez Patiño, (2) Marlene Cisneros, (3) José Gildardo Ortega, (4) José Arcos, (5) Alfredo Quiñones, (6) Arcediano Pialejo Micolta, (7) Claudio Esterilla Montaña, (8) Gonzalo Caicedo Esterilla, (9) José Rogelio Montaña, (10) Maritza Caicedo Ordoñez, (11) Marianita Montilla Cobo, (12) Fanny Caicedo, and (13) José Pablo Estrada Perlaza, in Colombia.

25. The Commission emphasizes that regardless of the lifting of these measures, in accordance with Article 1(1) of the American Convention, it is the obligation of the State of Colombia to respect and guarantee the rights recognized therein, including the life and personal integrity of the beneficiaries.

26. The Commission recalls that the lifting of the measures does not prevent the representation from filing a new request for precautionary measures should they consider that they are at risk and meet the requirements set forth in Article 25 of the Rules of Procedure.

27. The Commission instructs the Executive Secretariat of the IACHR to notify this resolution to the State of Colombia and the representation.

28. Approved on February 25, 2023, Julissa Mantilla Falcón, President; Edgar Stuardo Ralón Orellana, First Vice-President; Esmeralda Arosemena de Troitiño; Joel Hernández García; and Roberta Clarke, members of the IACHR.

⁹ Ibidem

¹⁰ I/A Court H.R., Matter of Adrián Meléndez Quijano et al. Provisional Measures regarding El Salvador. Resolution of the Court of August 21, 2013, para. 22, and Matter of Galdámez Álvarez et al. Provisional Measures regarding Honduras. Order of the Inter-American Court of Human Rights of November 23, 2016, para. 24

Tania Reneaum Panszi
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